

ASSEMBLY BILL

No. 1051

Introduced by Assembly Member Goldberg

February 20, 2003

An act to amend Section 54999.1 of, and to add Sections 54999.7 and 54999.8 to, the Government Code, relating to local government.

LEGISLATIVE COUNSEL'S DIGEST

AB 1051, as introduced, Goldberg. Capital facilities fees.

Existing law authorizes a public agency that provides public utility service, as defined, to impose a capital facilities fee on any school district, county office of education, community college district, the California State University, the University of California, or state agency, subject to certain restrictions. Existing law defines the terms “capital facilities fee” or “capacity charge” as any nondiscriminatory charge to pay the capital cost of a public utility facility.

This bill would revise the definition of the term “capital facilities fee” to mean a nondiscriminatory charge, including, but not limited to, a connection fee, as defined, capacity charge, as defined, or both. The bill would require any judicial action or proceeding to seek a refund of a capital facilities fee, service rate or charge, as defined, or surcharge, as defined, or increase, or challenging the validity of a capital facilities fee, service rate or charge, or surcharge, or increase, paid by a public agency to be commenced as specified. It would require any action by a public utility service provider to be in accordance with specified law, and would place on the public agency imposing the fee, rate, charge, or surcharge increases the burden of producing evidence, as prescribed.

The bill, notwithstanding any of the existing provisions relating to the imposition of a capital facilities fee, would authorize a public

agency that provides public utility service to charge a public agency service rates or charges, on the basis of the same objective criteria and methodology applicable to comparable nonpublic users, including the costs of operation, maintenance, construction, repair, replacement, or rehabilitation of facilities, or debt service payments on facilities, not in excess of the reasonable cost of providing the public utility service.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 54999.1 of the Government Code is
2 amended to read:

3 54999.1. For purposes of this chapter:

4 (a) “Actual construction costs” includes the cost of all
5 activities necessary or incidental to the construction of a public
6 utility facility, such as financing, planning, designing, acquisition
7 of property or interests in property, construction, reconstruction,
8 and rehabilitation.

9 (b) “Capacity charge” means a charge imposed on customers
10 who are requesting new public utility services and that is designed
11 to recover costs of public utility facilities necessary to serve new
12 customers.

13 (c) (1) “Capital facilities fee” or ~~“capacity charge”~~ means
14 any nondiscriminatory charge ~~to pay the capital cost of a public~~
15 ~~utility facility imposed to pay for public utility facilities,~~
16 including, but not limited to, a connection fee, a capacity charge,
17 or both. “Capital facilities fee” does not include a service rate,
18 charge, or surcharge.

19 ~~(e)~~

20 (2) A capital facilities fee is imposed on the date on which the
21 statement of charges for a public utility service is mailed or
22 otherwise transmitted to the public agency that is receiving or will
23 receive the public utility’s service.

24 (d) “Connection fee” means a fee for the physical facilities
25 necessary to connect a public agency facility to a public utility,
26 including, but not limited to, meters, meter boxes, and pipelines to
27 make the connection, that does not exceed the actual cost of labor
28 and materials for the installation of those facilities.

1 (e) “Nondiscriminatory” means that the capital facilities fee
2 does not exceed an amount determined on the basis of the same
3 objective criteria and methodology applicable to comparable
4 nonpublic users, and is not in excess of the proportionate share of
5 the cost of the public utility facilities of benefit to the person or
6 property being charged, based upon the proportionate share of use
7 of those facilities.

8 (f) “Public agency” means the United States or any of its
9 agencies, the state or any of its agencies, the Regents of the
10 University of California, a county, a city, a district, a public
11 authority, or any other political subdivision or public corporation
12 of this state.

13 ~~(d)~~

14 (g) “Public utility facility” means a facility for the provision
15 of water, light, heat, communications, power, or garbage service,
16 for flood control, drainage or sanitary purposes, or for sewage
17 collection, treatment, or disposal.

18 ~~(e)~~

19 (h) “Public utility service” means service provided from a
20 public utilities facility.

21 ~~(f) “Nondiscriminatory” means that the capital facilities fee~~
22 ~~does not exceed an amount determined on the basis of the same~~
23 ~~objective criteria and methodology applicable to comparable~~
24 ~~nonpublic users, and is not in excess of the proportionate share of~~
25 ~~the cost of the public utility facilities of benefit to the person or~~
26 ~~property being charged, based upon the proportionate share of use~~
27 ~~of those facilities.~~

28 ~~(g)~~

29 (i) “Service rate or charge” means a rate or charge imposed
30 on a monthly or periodic basis to all users to recover the costs of
31 providing public utility services to those users, including the costs
32 of operation, maintenance, construction, repair, replacement, or
33 rehabilitation of facilities, or debt service payments on facilities.

34 (j) “State agency” or “state” means any state office,
35 department, division, bureau, board, or commission.

36 ~~(h) A capital facilities fee is imposed on the date on which the~~
37 ~~statement of charges for a public utility service is mailed or~~
38 ~~otherwise transmitted to the public agency that is receiving or will~~
39 ~~receive the public utility’s service.~~

1 (k) (1) “Surcharge” means any additional charge or charges
2 assessed on a monthly or periodic basis to all customers of a public
3 utility service provider for a particular purpose.

4 (2) A surcharge may be included in the same billing statement
5 as the service rate or charge.

6 SEC. 2. Section 54999.7 is added to the Government Code, to
7 read:

8 54999.7. (a) Any judicial action or proceeding to seek a
9 refund of a capital facilities fee, service rate or charge, or
10 surcharge, or increase in any of those costs, or challenging the
11 validity of a capital facilities fee, service rate or charge, or
12 surcharge, or increase, imposed on or after January 1, 2004, by a
13 public agency pursuant to this chapter, shall be commenced within
14 120 days of the effective date of the imposition of the fee, rate,
15 charge, or surcharge, or increase.

16 (b) Any action by a public agency under this chapter to validate
17 an ordinance, resolution, or motion shall be in accordance with
18 Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of
19 the Code of Civil Procedure. However, any action by a public
20 agency imposing or increasing the fee, rate, charge, or surcharge
21 may be commenced no earlier than 120 days from the effective
22 date of the imposition of the fee, rate, charge, surcharge, or
23 increase. The public agency imposing or increasing the fee, rate,
24 charge, or surcharge shall have the burden of producing evidence
25 to establish that it is nondiscriminatory and that the amount of the
26 fee, rate, charge, surcharge, or increase does not exceed the amount
27 necessary to provide capital facilities for which the fee is charged.

28 SEC. 3. Section 54999.8 is added to the Government Code, to
29 read:

30 54999.8. Notwithstanding any other provision of this chapter,
31 a public agency that provides public utility service may charge a
32 public agency monthly or periodic service rates, charges, or
33 surcharges, on the basis of the same objective criteria and
34 methodology applicable to comparable nonpublic users, including
35 the costs of operation, maintenance, construction, repair,
36 replacement, or rehabilitation of facilities, or debt service
37 payments on facilities, that are not in excess of the reasonable cost
38 of providing the public utility service.

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